

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.

05-12-2004

U.S. Patent & TMOtc/TM Mail Rpt Dt. #78

Cancellation No. 41,776

CERTIFICATE UNDER 37 C.F.R. 1.10:

'Express Mail' mailing number: EL984580757US

Date of Deposit: May 11, 2004

The undersigned hereby certifies that this Transmittal Letter and the paper or fee, as described herein, are being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 and is addressed to: Box TTAB, 2900 Crystal Drive, Arlington VA 22202.

By:

Rebecca J. Bishop
Rebecca J. Bishop

PAVE TECH'S MOTION TO QUASH AND FOR PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 7 and 26(c), Rule 2.120(f) and TBMP §§ 410, 502 and 521 (2d ed., 1st revision, March 2004), Registrant Pave Tech, Inc. ("Pave Tech") hereby moves the Trademark Trial and Appeal Board (the "Board") to prevent the depositions of Glen Wroblewski on May 12, 2004, and Dale Sapkowiak on May 14, 2004, from proceeding on the grounds that 1) the noticed depositions are untimely, 2) the noticed depositions are unnecessary and are designed to annoy, oppress or put undue burden or expense on Pave Tech in this matter, and 3) in any event, the taking of the depositions should be deferred until after determination of Caterpillar's Motion for Extension of Discovery and Testimony Periods. In support of this Motion, Pave Tech hereby states as follows:

1. By direction of the Board, the discovery period in the present Cancellation proceeding closed on May 5, 2003. Exhibit A, February 25, 2004 Consented Motion to Extend Discovery and Testimony Periods and March 20, 2004 TTAB Order granting Motion.

2. Pursuant to 37 CFR § 2.120(a) and TBMP § 404.01, discovery depositions must be both noticed and taken prior to the expiration of the discovery period.

3. On April 28, 2004, Caterpillar served a Notice of Deposition on Pave Tech for the deposition of Glen Wroblewski to be taken on May 12, 2004, after the close of the discovery period.¹ Exhibit B, Notice of Deposition of Glen Wroblewski.

4. Also on April 28, 2004, Caterpillar served a Notice of Deposition on Pave Tech for the deposition of Dale Sapkowski to be taken on May 14, 2004, after the close of the discovery period. Exhibit C, Notice of Deposition of Dale Sapkowski.

5. Accordingly, the Wroblewski and the Sapkowski depositions were noticed untimely and should be quashed.

6. In addition, Pave Tech submits that the above-identified Caterpillar depositions were designed merely to annoy, oppress or put undue burden and expense on Pave Tech in this matter.

7. On February 23 and 24, 2004, Caterpillar took two extensive depositions in this action: Steve Jones, President of Pave Tech and Robert Cramer, Field Services Manager of Pave Tech, respectively.

8. From the dates of those depositions until less than one week before the close of the discovery period in this case, Caterpillar never once indicated that it wished to take additional

¹ Pave Tech notes that Caterpillar sent this fax on April 28, 2004, but as it was sent very late in the day, counsel for Caterpillar did not receive the materials until the next morning, April 29, 2004.

depositions *until Pave Tech served its own Notices of Deposition*. It is clear the Caterpillar deposition notices were retaliatory in nature.

9. Indeed, in an April 28, 2004 fax communication to Pave Tech, Caterpillar clearly stated that, in its opinion, it had obtained sufficient information from its first two depositions on the issue of likelihood of confusion. Exhibit D, April 28, 2004 fax from Caterpillar.

Accordingly, by Caterpillar's own admission, its second round of Notices of Deposition were unnecessary, and, therefore, obviously designed to annoy, oppress or put undue burden or expense on Pave Tech in this matter.

10. Further, Caterpillar stated in the same communication that if Pave Tech did not agree to settle the case on Caterpillar's terms, it would pursue additional depositions. Exhibit D, April 28, 2004 fax from Caterpillar. Therefore, the second round of Caterpillar depositions were clearly a threatening maneuver to entice Pave Tech to settle.

11. Currently pending before the Board is Caterpillar's contested Motion for Extension of Discovery and Testimony Periods, which would allow for Caterpillar to take its second, untimely and unnecessary round of depositions.

12. As set forth in detail in Pave Tech's Brief in Response to Caterpillar's Motion for Extension of Discovery and Testimony Periods, filed concurrently herewith, Pave Tech contests any extension of the discovery or testimony periods in this matter.

13. As the Board is aware, there have already been a number of extensions in the discovery and testimony periods in this matter, and Pave Tech does not wish to delay this case any further.

14. In compliance with Rule 2.120(f), and as set forth in the Declaration of Rebecca J. Bishop filed herewith in support of this Motion as Exhibit E, Pave Tech's counsel attempted in

good faith to resolve this discovery dispute but was unable to reach an accommodation with Caterpillar's counsel.

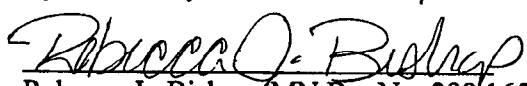
For the reasons set forth herein, Pave Tech respectfully requests that the Board deny Caterpillar's Motion for Extension of Discovery and Testimony Periods and issue a Protective Order to prevent the May 12 and 14, 2004 depositions sought by Caterpillar in this action from proceeding.

Respectfully submitted,

PAVE TECH, INC.

By its attorneys,

Dated: May 11, 2004



Rebecca Jo Bishop (MN Bar No. 298,165)

Karen D. McDaniel (MN Bar No. 194,554)

ALTERA LAW GROUP

6500 City West Parkway

Suite 100

Eden Prairie, MN 55344

Telephone: (952) 253-4100

Fax: (952) 912-0574

Michael J. O'Loughlin (MN Bar No. 81,607)

MICHAEL J. O'LOUGHLIN & ASSOC, P.A.

400 South 4th Street

1012 Grain Exchange Building

Minneapolis, MN 55415

Telephone: (612) 342-0351

Fax: (612) 342-2399

Exhibit A

TIAK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Respondent.

75/904,827

Cancellation No. 41,776



03-01-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

CONSENTED MOTION TO EXTEND DISCOVERY AND TESTIMONY PERIODS

Petitioner hereby moves to extend the discovery period and all subsequent
testimony periods for thirty (30) days in the above proceeding as follows:

Discovery Period to close:	May 5, 2004
30-day testimony period for party in position of Plaintiff to close:	August 5, 2004
30-day testimony period for party in position of defendant to close:	October 4, 2004
15-day rebuttal testimony period for plaintiff to close:	November 17, 2004

The parties are responding to written discovery requests. This additional time is
necessary to exchange documents, prepare for the depositions, and complete discovery before
proceeding with the testimony period.

Certificate of Mailing
I hereby certify that this correspondence is being deposited with the United States Postal Service as first
class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington Virginia
22202-3514 on February 25, 2004.

Deanna Perez

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02/25/2004 lp
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150565v1

The parties respectfully submit that this constitutes good cause for the requested extension. Respondent's attorney, Michael J. O'Loughlin, consented to this extension via telephone on February 25, 2004.

Respectfully submitted,

LOEB & LOEB LLP

Date: February 25, 2004

By: _____

Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

CERTIFICATE OF SERVICE

I, Nerissa Coyle McGinn, hereby certify that I caused a copy of the foregoing
CONSENTED MOTION TO EXTEND DISCOVERY AND TESTIMONY PERIODS to
Michael J. O'Loughlin, Micheal J. O'Loughlin & Associates, P.A., 400 South 4th Street, 1012
Grain Exchange Building, Minneapolis, Minnesota 55415 by first class mail, postage prepaid on
February 25, 2004.

A handwritten signature in black ink, appearing to be "Nerissa Coyle McGinn", written over a horizontal line.

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

Mailed: March 20, 2004

Opposition No. 92041776

CATERPILLAR INC.

v.

Pave Tech, Inc.

ANGELA CAMPBELL, PARALEGAL SPECIALIST:

Opposer's/Applicant's consented motion filed March 1,
2004 to extend discovery and trial dates is granted.
Trademark Rule 2.127(a).

The discovery and trial dates are reset in accordance
with opposer's/applicant's motion.

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.

Cancellation No. 41,776



05-12-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

NOTICE OF DEPOSITION

TO: Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

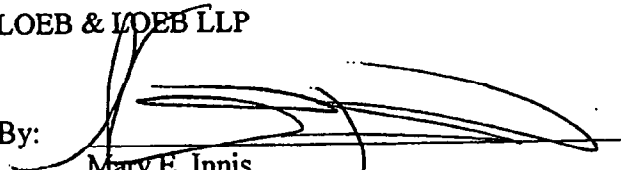
On Wednesday, May 12, 2004, beginning at 9:30 am, Petitioner, Caterpillar Inc., will depose the person identified below before a court reporter or other person qualified to administer oaths. The depositions will take place at Brown and James Reporting, 312 E. Wisconsin Avenue, Suite 608, Milwaukee, WI 53202 and continue until completed. The deposition shall be recorded by means chosen by Petitioner. The deponent shall be the following:

1. Glen Wroblewski

Dated: April 28, 2004

LOEB & LOEB LLP

By:


Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true and correct copy of the foregoing
AMENDED NOTICE OF DEPOSITION was served via facsimile and U.S. Mail on April 28,
2004 to the following counsel of record:

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

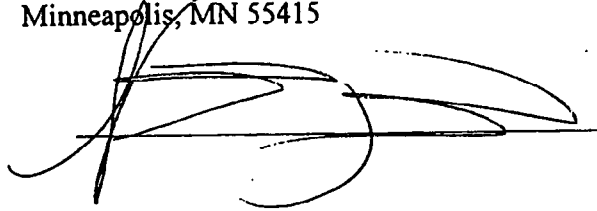
A handwritten signature in black ink, appearing to be 'M. J. O'Loughlin', written over a horizontal line.

Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
Petitioner,)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	

NOTICE OF DEPOSITION

TO: Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

On Friday, May 14, 2004, beginning at 9:30 am, Petitioner, Caterpillar Inc., will depose the person identified below before a court reporter or other person qualified to administer oaths. The depositions will take place at Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402 and continue until completed. The deposition shall be recorded by means chosen by Petitioner. The deponent shall be the following:

1. Dale Sapkowiak

Dated: April 28, 2004

LOEB & LOEB LLP

By: 

Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true and correct copy of the foregoing
AMENDED NOTICE OF DEPOSITION was served via facsimile and U.S. Mail on April 28,
2004 to the following counsel of record:

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

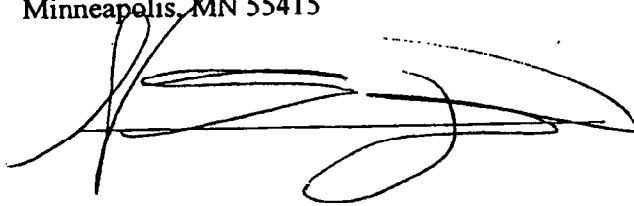
A handwritten signature in black ink, appearing to be "Michael J. O'Loughlin", written over the printed name and address.

Exhibit D

LOEB & LOEB LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

200 S. WACKER DRIVE
SUITE 3100
CHICAGO, IL 60606-5867

TELEPHONE: 312.674.4780
FACSIMILE: 312.674.4779
www.loeb.com

Direct Dial: 312-674-4784
e-mail: nmcginn@loeb.com

April 28, 2004

VIA FACSIMILE & U.S. MAIL

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415

Rebecca Jo Bishop
Altera Law Group
6500 City West Parkway
Suite 100
Eden Prairie, MN 55322

Re: Caterpillar Inc. v. Pave Tech, Inc.

Dear Michael:

After reviewing the deposition testimony of Stephen Jones and Robert Cramer, Caterpillar believes that the deposition testimony establishes that there is a likelihood of confusion between the Caterpillar Marks and Pave Tech's PAVERCAT mark. The most damning of the evidence against Pave Tech is the fact that one of Pave Tech's 30(b)(6) witnesses admitted that there is a possibility of confusion between the two marks. In his deposition, Bob Cramer admitted that he believed there was a possibility that attendees at trade shows might mistakenly believe that the PAVERCAT product was somehow associated with Caterpillar. Cramer, p. 34-35.

In addition to this admission, Caterpillar also believes the deposition testimony demonstrates a likelihood of confusion between the PAVERCAT and the Caterpillar Marks because the marks, the products sold in connection with the marks, and the markets in which the products are sold are confusingly similar. First, the addition of the descriptor "paver" does not sufficiently distinguish the PAVERCAT mark from the Caterpillar Marks. The only difference between the CAT and PAVERCAT marks is the word "paver" which Pave Tech has admitted is generic for the type of brick used in segmental paving. Jones, p. 11, 16-17; Cramer, p. 47. The Board repeatedly has ruled that the combination of a descriptive or generic term such as "paver" with a famous mark such as the CAT mark does not adequately distinguish the challenged mark from the CAT mark. *Caterpillar Inc. v. Gehl Company*, 177 U.S.P.Q. 343 (TTAB 1973) (holding that Caterpillar's mark CAT and respondent's mark HYDRACAT were

LOS ANGELES
NEW YORK
CHICAGO
NASHVILLE

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confusingly similar); *Caterpillar v. Electric Carrier Corp.*, 201 U.S.P.Q. 778 (T.T.A.B. 1978) (sustaining Caterpillar's opposition against applicant's mark ELECTRICAT).

Moreover, Pave Tech has a family of marks which combine two generic terms such as the following:

1. PAVEREXTRACTOR – a tool used to extract pavers
2. PAVERCART – a cart used to transport pavers
3. PAVERADJUSTER – a tool used to adjust pavers.

Similar to Pave Tech's other marks, Caterpillar believes that the PAVERCAT mark is a combination of two terms being used descriptively. As admitted by Pave Tech, the term "paver" is descriptive of the type of bricks used in the segmental paving industry. Moreover, both Stephen Jones and Bob Cramer admitted that CAT is a well-known or famous brand name for heavy equipment. Cramer, p. 48; Jones, p. 42-43. Therefore, Pave Tech is using the term "cat" to intentionally trade on the goodwill of the Caterpillar Marks in connection with heavy equipment.

Second, the PAVERCAT and Caterpillar products are confusingly similar. Despite the fact that Pave Tech attempted to distinguish the PAVERCAT product from a Caterpillar skid steer loader, Bob Cramer admitted during his deposition that both a skid steer loader and a PAVERCAT perform some of the same functions – back dragging and moving pavers. Cramer, p. 47. Moreover, Pave Tech admitted that Pave Tech has used and continues to use skid steer loaders instead of the PAVERCAT product for installing segmental pavers and in demonstrations. Jones, p. 75; Cramer, p. 9-18.

Third, the PAVERCAT and Caterpillar products are sold in the same market. Pave Tech attempted to distinguish Caterpillar markets by claiming that the target market for the PAVERCAT is the small, niche segmental paver market. However, as admitted by Stephen Jones, this niche market is a subset of the general construction and landscaping markets – both of which are Caterpillar target markets. Jones, p. 71-72. In addition to this admission, it is clear from Bob Cramer's testimony that Caterpillar and Pave Tech's marketing efforts overlap. Bob Cramer, Pave Tech's

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Rebecca Jo Bishop
April 28, 2004
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30(b)(6) witness on trade shows, admitted that Caterpillar and Pave Tech attended the same trade shows. Cramer, p. 34. The trade shows which both Caterpillar and Pave Tech attended include the following: the World of Concrete 2000 (which is the first trade show where Pave Tech first introduced the PAVERCAT); the World of Concrete 2001, the Green Industry Expo 2002, and the Green Industry Expo 2003. Cramer, p. 9-18, 23-24, 33, 39-40. Therefore, Caterpillar and Pave Tech's markets overlap.

Because the deposition testimony strongly supports Caterpillar's arguments that there is a likelihood of confusion between the marks, Caterpillar suggests settling this matter. Caterpillar has attached a proposed settlement agreement to this letter as Exhibit 1.

Caterpillar believes settling this matter before either party incurs any additional discovery expenses will be best for both parties. In addition, Caterpillar believes that settlement in this action is particularly attractive for Pave Tech since it is no longer using the PAVERCAT mark and has no plans to use the PAVERCAT mark in the future. However, Caterpillar would be willing to discuss an appropriate phase out period if necessary.

If Pave Tech does not agree to the terms of the attached settlement agreement, Caterpillar intends to aggressively proceed with the outstanding discovery issues. This would include deposing both Glenn Wroblewski and Dale Sopkowiak. We have attached notices of deposition as Exhibit 2 for both of these witnesses with tentative dates for the depositions that we can discuss in the future. Caterpillar would like to conduct these depositions in early May if Pave Tech does not agree to settle this matter by that time.

Sincerely,



Nerissa McGinn
for Loeb & Loeb LLP

Exhibit E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.



05-12-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #79

Cancellation No. 41,776

DECLARATION OF REBECCA J. BISHOP

1. I am an attorney with Altera Law Group, LLC, 6500 City West Parkway, Suite 100, Eden Prairie, MN 55344.. Steve Jones, President of Pave Tech, Inc. ("Pave Tech") recently retained Altera Law Group to work in conjunction with Michael J. O'Loughlin in the above-identified matter. I am the primary attorney at Altera Law Group involved in this matter.

2. This declaration is being offered to support Pave Tech's Response to Caterpillar's Motion for Protective Order and Pave Tech's Response to Caterpillar's Motion for Extension of Discovery and Testimony Periods. I have personal knowledge of the facts set forth herein and can testify competently hereto.

3. The substance of this declaration is expressly limited to the issue of whether I orally stipulated to an extension of the discovery deadline past May 5, 2004. By declaring as follows, I do not intend to reveal any client confidences in violation of Pave Tech's attorney-client privilege. To the extent this declaration may necessarily reveal such confidences, any

breach to Pave Tech's attorney-client privilege is limited to the specific issue of my discussions with Pave Tech regarding a stipulation to an extension of the discovery period past May 5, 2004.

4. At no time prior to April 29, 2004 did I receive authority from Pave Tech to agree to an extension of the discovery period, as requested by Caterpillar. Given that I was brought into this case fairly recently and my knowledge of the case is new, I was extremely careful to discuss all aspects of this case with my client and to receive full authority to act on behalf of my client before taking any actions in the case. Moreover, I was extremely careful to relay to counsel for Caterpillar that I did not have authority to act on behalf of my client when I, indeed, did not yet have authority. As detailed below, I specifically told counsel for Caterpillar, several times, that I could not agree to an extension of time until I discussed the matter with my client.

5. On April 21, 2004, Pave Tech served three deposition notices on Caterpillar, noticing depositions to be taken on May 3, 4 and 5, 2004. I note that by order of the Trademark Trial and Appeal Board, the discovery period in this matter was set to close on May 5, 2004.

6. On April 22, 2004, I received an e-mail from counsel for Caterpillar stating as follows:

Please be advised that both Ms. McGinn and I are out of the office. I do know, however, that we will need to reschedule the depositions as both Nerissa and I are out of the office May 1-7. In addition, I believe that we will need to agree to extend the discovery period to schedule the depositions and further depositions on our end. We also might want to discuss some settlement options. I will call you today if I am able or tomorrow to discuss further.

7. Shortly thereafter, I telephoned Steve Jones, President of Pave Tech, Inc., to discuss the advantages and disadvantages of stipulating to an extension of the discovery period in this case. Mr. Jones instructed me to call counsel for Caterpillar to get more details about their

request so that he could make a more informed decision. Specifically, Mr. Jones did not authorize me to agree to an extension of the discovery period.

8. For the next week, I diligently attempted to contact counsel for Caterpillar to no avail. On April 27, 2004, I finally spoke with Nerissa Coyle McGinn, counsel for Caterpillar, regarding the deposition schedules, settlement and Caterpillar's request for an extension of time. Ms. McGinn indicated that Caterpillar wanted a 60-day extension of time in order to take depositions in addition to the two depositions it had already conducted in February. With respect to Caterpillar's request for an extension of the discovery period, I indicated that 60 days sounded a bit excessive, but 30 days was perhaps a more realistic request. As my client had not given me authority to agree to a stipulation of *any* duration, *I specifically stated*, "60 days sounds excessive, I have no problem with 30 days, but *I cannot agree to anything without discussing this with my client first.*" To be clear, I explicitly stated at least one more time during this conversation that I could not agree to an extension of the discovery period before speaking with my client. Ms. McGinn indicated that Caterpillar would be sending additional information to Pave Tech very shortly, perhaps within a day or two.

9. Immediately thereafter, I called my client to relay the information obtained during the telephone call with Caterpillar. I reiterated to Mr. Jones that Caterpillar's request for a 60-day extension sounded excessive, 30 days sounded a bit more reasonable, but that the ultimate decision rested with Pave Tech. Mr. Jones stated that he wished to reserve making a final decision until we received the additional information from Caterpillar.

10. Two days later, on April 29, 2004, I received a fax from Caterpillar that included two Notices of Deposition to be taken outside of the discovery period, despite the fact that Pave Tech had not stipulated to an extension of the discovery period. Mr. Jones happened to be in

Altera's offices at that time, so I discussed the fax with my client and Ms. McDaniel immediately. Given the untimely deposition notices of Caterpillar coupled with the outstanding issue of Pave Tech's timely-noticed depositions that needed to be rescheduled, Ms. McDaniel and I suggested we discuss the matter further. My client instructed me to call him that afternoon to make a final decision.

11. When I spoke with Mr. Jones that afternoon, he was clear that he did not wish to agree to an extension of time. Mr. Jones authorized me to contact Caterpillar to relay his final decision and to discuss with Caterpillar alternate dates for Pave Tech's timely-noticed depositions.

12. I then called Ms. McGinn and stated that Pave Tech would not stipulate to an extension of the discovery period. In response, counsel for Caterpillar surprisingly argued that I had somehow already agreed to at least a 30-day extension. I was completely surprised by this allegation. Given the fact that Caterpillar could not take additional depositions without this extension, it was clear that Caterpillar had twisted my words to suit its case and was attempting to coerce me into an extension to which I had distinctly refused. I reminded Ms. McGinn of my specific statement during our earlier conversation that I could not agree to an extension of time without speaking with my client first.

13. In addition, I reminded Ms. McGinn that Pave Tech had timely noticed three depositions for the following week, May 3-5, 2004. Ms. McGinn indicated that counsel for Caterpillar was going to a trademark conference and could not attend. As a courtesy, I offered to unilaterally extend the discovery period so these depositions could be taken at a more convenient time for Caterpillar. Ms. McGinn stated that she would contact me the following day with alternate dates.

14. On April 30, 2004, instead of receiving alternate dates for the Pave Tech depositions, we were served with Caterpillar's Motion for Protective Order and Motion for Extension of Discovery and Testimony Periods.

15. None of the people Pave Tech had noticed for deposition appeared at the required place or time on May 3, 4 or 5, 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: May 11, 2004

Rebecca J. Bishop

Rebecca J. Bishop

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 11th day of May, 2004, a true and correct copy of the foregoing document, PAVE TECH'S MOTION TO QUASH AND FOR PROTECTIVE ORDER, including all Exhibits, was served via facsimile and first class mail, postage prepaid, on:

Mary E. Innis
Nerissa Coyle McGinn
LOEB & LOEB LLP
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
(312) 674-4780
(312) 647-4779 (fax)

and by facsimile on:

Michael J. O'Loughlin
MICHAEL J. O'LOUGHLIN & ASSOC. P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415
(612) 342-0351
(612) 342-2399 (fax)


Rebecca J. Bishop

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.

Cancellation No. 41,776

POWER OF ATTORNEY

Pave Tech, Inc. hereby appoints, in *addition* to Michael J. O'Loughlin, the following attorneys to act on its behalf before the United States Patent and Trademark Office, Trademark Trial and Appeal Board, in connection with this Cancellation:

Rebecca J. Bishop (#298,165)
Karen D. McDaniel (#194,554)
ALTERA LAW GROUP LLC
6500 City West Parkway, Suite 100
Eden Prairie, MN 55344
(952) 253-4100

Please address all correspondence to both Rebecca J. Bishop of ALTERA LAW GROUP at 6500 City West Parkway, Suite 100, Eden Prairie, MN 55344, (952) 253-4100, and Michael J. O'Loughlin of MICHAEL J. O'LOUGHLIN & ASSOCIATES, P.A. at 400 South 4th Street, 1012 Grain Exchange Building, Minneapolis, MN 55415, (612) 332-0351.

Dated: May 11 2003 ⁴

PAVE TECH, INC.

By:

Name:

Title:

Stephen Jones
Stephen Jones
President

"Express Mail" mailing label number EL 98458075706

5-11-04

Date of Deposit
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Rebecca J. Bishop
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1. The first part of the document is a list of names and addresses of the persons who have been identified as having been in contact with the subject of the investigation. The names are listed in alphabetical order, and the addresses are given in full, including the city and state. The list is as follows:

Mr. J. Edgar Hoover, Director, Federal Bureau of Investigation, Washington, D. C.
Mr. Clegg, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Glavin, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Ladd, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Nichols, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Rosen, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Tracy, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Carson, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Egan, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Gurnea, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Hendon, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Pennington, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Quinn, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Nease, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Gandy, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Egan, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Gurnea, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Hendon, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Pennington, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Quinn, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Nease, Chief of the Bureau of Investigation, Washington, D. C.
Mr. Gandy, Chief of the Bureau of Investigation, Washington, D. C.

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 11th day of May, 2004, a true and correct copy of the foregoing document, POWER OF ATTORNEY, was served via facsimile and first class mail, postage prepaid, on:

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(312) ~~647~~-4779 (fax)
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and by facsimile on:

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Rebecca J. Bishop